REMARKS

Reconsideration and allowance of the above-reference application are respectfully requested. Claims 6, 24, and 35 are amended, and claims 1-40 are pending in the application.

The indication of informalities in claims 6, 24, and 35 is acknowledged with appreciation. It is believed these claims as amended are in proper form.

Claims 1-40 stand rejected under 35 USC §103 in view of US Patent No. 6,625,258 to Ram et al. in view of US Patent No. 5,138,311 to Weinberg. This rejection is respectfully traversed.

Each of the independent claims 1, 12, 19 and 30 specify playing an alternate subscriber announcement that includes an audible subscriber identifier, having been stored in a directory server, based on a determined unavailability of a subscriber announcement from a messaging server, the alternate subscriber identifier having a second size substantially smaller than the size of the subscriber announcement stored in the messaging server.

Hence, an application server can provide fault tolerant messaging services for an incoming caller that is attempting to reach a messaging subscriber, even if the messaging server that stores the subscriber announcement for the messaging session of the incoming caller is unavailable. These and other features are the disclosed are suggested in the applied prior art.

US Patent No. 6, 625,258 to Ram et al. describes a virtual assistant system that supports call services, message services, and profile services, and which interfaces to both a telephone network into a data network.

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As admitted in the Official Action, Ram et al. does not disclose that an alternate greeting could be supplied based on determining the unavailability of the first greeting. Moreover, Ram et al. provides <u>no disclosure whatsoever</u> of any type of fault tolerant mechanism.

In addition, Ram et al. neither discloses nor suggests storage of a subscriber announcement <u>in a messaging server</u>, as claimed; rather, Ram et al. describes that all the subscriber announcements (e.g., welcome greetings) are stored as part of the subscriber profile (see, e.g., column 13, lines 1-28). Note, however, that Ram et al. fails to identify where the subscriber profile (including welcome greetings) should be stored.

Weinberg describes a paging terminal configured for selectively accepting a paging message having a larger format, for example a voice message format (see, e.g., column 1, lines 34-38 and column 1, line 61 to column 2, line 2). A particular advantage identified by Weinberg is that the choice of message format to convey the information to the pager user is typically delegated to the caller (column 2, lines 13-14).

Hence, Weinberg describes that if a requested pager address maps to a "long" message format, and that the communication activity exceeds a prescribed threshold, then the <u>caller</u> should be prompted for an alternate "short" message format (see, e.g., steps 604, 610, 612, and 614 in Figure 6, and accompanying text at column 8, line 62 to column 9, line 57).

Hence, Weinberg merely describes that the paging terminal <u>prompts the caller</u> to use an alternate short message format during peak intervals where the requested long message format would result in an inefficient use of available system resources. Moreover, the paging terminal retrieves the alternate short message from the same source, namely <u>the caller</u>.

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Hence, Weinberg neither discloses nor suggests retrieving a second data file having a second size substantially smaller than the size of the first file and from an alternate source. Rather, Weinberg requires that the user that provided the "long" message format be prompted to use the short message format, else the page request is rejected by the system (see step 618 in Figure 6).

Hence, the rejection should be withdrawn because it fails to address each and every claim limitation: the Official Action fails to address how one skilled in the art would have been motivated to combine the two references in order to provide the feature of retrieving the audible subscriber identifier, let alone retrieving from the directory server, as an audible subscriber announcement for the messaging session for an incoming call, as claimed. Rather, the hypothetical combination merely would limit the types of messages that a calling party could supply to the subscriber.

There is no disclosure or suggestion in the hypothetical combination that a stored subscriber announcement in a messaging server could be substituted by an audible subscriber identifier stored in the directory server as an alternate subscriber announcement for the messaging session for the incoming call. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). In re Mills, 16 USPQ2d 1430 (Fed. Cir. 1990).

The tortured interpretation of Weinberg as teaching the claimed audible subscriber identifier stored in the directory server, in combination with the failure of the Official Action to

provide <u>any application of the primary reference</u> (Ram et al.) demonstrates that the Examiner is improperly using the claimed invention as a template to piece together the teachings of prior art. "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious."   <u>In re Fritch</u>, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

For these and other reasons, this §103 rejection should be withdrawn.

In view of the above, it is believed this application is and condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a), to Deposit Account No. 50-1130, under Order No. 95-461, and please credit any excess fees to such deposit account.

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